

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AFFYMETRIX, INC.,)
)
Plaintiff,)
)
v.)
)
) C.A. No. 04-901-JJF
ILLUMINA, INC.,)
)
Defendant.)
)
)

RULE 16 SCHEDULING ORDER

The parties having satisfied their obligations under Fed. R. Civ. P. 26(f), and the Court having conducted a scheduling conference pursuant to Fed. R. Civ. P. 16 and D. Del. LR 16.2(a) and (b),

IT IS ORDERED THAT:

1. **Pre-Discovery Disclosures.** The parties will exchange by **June 30, 2005** the information required by Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.2.

2. **Joinder of Other Parties.** All motions to join other parties shall be filed on or before **July 29, 2005**.

3. **Discovery.**

(a) Exchange and completion of contention interrogatories, identification of fact witnesses and document production shall be commenced so as to be completed by **October 14, 2005**.

(b) Maximum of 50 interrogatories, including contention interrogatories, for each side.

(c) Maximum of 100 requests for admission by each side.

(d) Maximum of 200 hours of deposition for each side, excluding expert depositions, unless otherwise agreed in writing by the parties or ordered by the Court. Each deposition of an individual witness, except for inventors, shall be no longer than 7 hours. Inventor depositions shall be no longer than 14 hours. The parties shall not be constrained as to the number of Rule 30(b)(6) depositions that are taken, except as limited by the overall hour limit.

(e) Fact discovery shall be completed by **March 3, 2006**.

(f) Reports from experts (whether retained or employees of a party) are due on issues on which a party bears the burden of proof by **March 17, 2006**; rebuttal expert reports are due by **April 14, 2006**.

(g) Any party desiring to depose an expert witness shall notice and complete said deposition no later than **May 12, 2006**, unless otherwise agreed in writing by the parties or ordered by the Court.

4. **Discovery Disputes.**

(a) A party seeking discovery which the opposing party refuses to provide shall file a motion (no brief) pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 37.1. Said motion shall not exceed a total of four (4) pages. An answer to the Rule 37 motion, not to exceed four (4) pages, shall be filed within five (5) days of service of the motion. No reply is permitted.

(b) All papers shall set forth in a plain and concise manner the issue(s) in dispute, the party's position on the issue(s), and the reasons for the party's position.

(c) Upon receipt of the Answer, the movant shall notify Chambers by e-mail at jjf_civil@ded.uscourts.gov that the dispute is ready for decision.

(d) Upon receipt of the movant's e-mail, the Court will determine whether a conference is necessary and advise the parties accordingly.

(e) There is no limit on the number of Rule 37 motions a party may file, unless otherwise ordered by the Court.

5. **Amendment of the Pleadings.** All motions to amend the pleadings shall be filed on or before **January 15, 2006**.

6. **Case Dispositive Motions.** Any case dispositive motions, pursuant to the Federal Rules of Civil Procedures, shall be served and filed with an opening brief on or before **June 9, 2006**. Briefing shall be pursuant to D. Del. LR 7.1.2. No case dispositive motion may be filed more than ten (10) days from the above date without leave of the Court. The Court will issue a separate Order regarding procedures for filing summary judgment motions.

7. **Markman.** A Markman Hearing will be held on **July 12, 2006**, at 10:00 a.m. The parties shall file opening Markman Briefs on **May 17, 2006** and responsive Markman Briefs on **June 2, 2006**. The Court, after reviewing the briefing, will allocate time to the parties for the hearing.

8. **Applications by Motion.**

(a) Any application to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective January 1, 1995). Any non-dispositive motion shall contain the statement required by D. Del. LR 7.1.1. Parties may file stipulated and unopposed Orders with the Clerk of

the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

- (b) No telephone calls shall be made to Chambers.
- (c) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: jjf_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency.

9. **Status Conferences.** Status conferences shall be held with the Court on the following dates: **October 19, 2005** and **February 15, 2006**.

10. **Pretrial Conference.** A Pretrial Conference will be held on **September 26, 2006**, at 4:00 p.m., in Courtroom No. 4B on the 4th Floor, Boggs Federal Building, Wilmington, Delaware. The Federal Rules of Civil Procedure and Rule 16.4 of the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective January 1, 1995) shall govern the pretrial conference.

11. **Trial.** Trial will commence at 9:30 a.m. on **October 16, 2006**, in Courtroom No. 4B on the 4th Floor, United States Courthouse, Boggs Federal Building Wilmington, Delaware.

12. **Other Matters.** (Any other matter a party desires the Court to address shall be submitted in writing at least four (4) business days before the Rule 16 Scheduling Conference).

13. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to Magistrate Judge Thynge for the purposes of exploring the possibility of a settlement.

Date

United States District Court Judge